

UNITED STATES DISTRICT COURT

for the

Western District of New York

____ Division

MICHAEL CORRIN STRONG

Case No.

21-cv-0532 DGL
(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

HOWARD ZUCKER MD,
COMMISSIONER
NEW YORK STATE DEPT. OF HEALTH

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Jury Trial: (check one) ☐ Yes ☒ No

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Michael Corrin Strong		
Address	17 Avon Road (P.O. Box 236)		
	Geneseo	NY	14454
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Livingston		
Telephone Number	585-233-5338		
E-Mail Address	corrin07@gmail.com		

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name	Howard Zucker MD		
Job or Title <i>(if known)</i>	Commissioner, NYS Dept of Health		
Address	Corning Tower, Empire State Plaza		
	Albany	NY	12237
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Albany		
Telephone Number			
E-Mail Address <i>(if known)</i>			
<input type="checkbox"/> Individual capacity <input checked="" type="checkbox"/> Official capacity			

Defendant No. 2

Name			
Job or Title <i>(if known)</i>			
Address			
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County			
Telephone Number			
E-Mail Address <i>(if known)</i>			
<input type="checkbox"/> Individual capacity <input type="checkbox"/> Official capacity			

Defendant No. 3

Name _____

Job or Title (*if known*) _____Address _____

City

State

Zip Code

County _____

Telephone Number _____

E-Mail Address (*if known*) _____☐

Individual capacity

☐

Official capacity

Defendant No. 4

Name _____

Job or Title (*if known*) _____Address _____

City

State

Zip Code

County _____

Telephone Number _____

E-Mail Address (*if known*) _____☐

Individual capacity

☐

Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (*check all that apply*):

☐Federal officials (a *Bivens* claim)☒

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?
Violation of equal protection under the 14th Amendment

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

On June 23, 2021 the State DOH adopted new regulations concerning masks for unvaccinated people by adding a new Subpart 66.3 to the Covid Emergency Regulations. The claimed authority for this was “Pursuant to authority granted to the Commissioner of Health by Sections 201, 206 and 225 of the Public Health Law and Executive Order 202.” In addition, since January of 2021 the State Health Department has been promoting use of the “Excelsior Pass” for citizens of the state to prove their vaccinated status. Both these rules and associated programs are discriminatory towards citizens who have survived Covid and have the antibodies, and actually represent a lesser health risk to the public than the vaccinated.

III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?

By adopting these new regulations and programs Defendant has attempted to create two classes of citizens: The “Vaccinated” who are no longer required to wear masks and have preferential access to many public accommodations, and the “Unvaccinated” who must mask up and are denied access to many public accommodations

In doing so, people like the Plaintiff, who have had Covid and enjoy natural immunity from the antibodies retained, are grouped with the “Unvaccinated.” There are two things wrong with this classification.

First, the vaccinations currently in use have been shown not to prevent people from getting or spreading Covid. They are only designed to limit the symptom of those who get it. Vaccinated people remain able to catch and transmit the disease. In fact, many of the people becoming ill from the current “Delta” variety of the virus have been “Fully” vaccinated. This fact has been recognized by the CDC which has recently called for “fully” vaccinated people to continue to wear face masks indoors.

Second, those who have had Covid and tested positive for the antibodies are extremely unlikely to get the disease again and therefore actually represent a lesser threat to the general public than the vaccinated. The preponderance of scientific evidence so far indicates that repeat cases are

extremely rare, on the order of 1 in 5,000 and survivor's are also mostly immune against the recent "Delta" variety. So far there is little evidence that this acquired immunity will fade away over time, in contrast to the so-called "immunity" given by vaccines. There is already talk of the need to get "boost-er" vaccines to extend the immunity of the Vaccinated.

By failing to include Covid Survivors in the "Vaccinated" class of those not required to wear a mask and are eligible for a "Excelsior Pass." the State Health Department has violated the equal protection clause of the 14th Amendment, in that people who have superior immunity from natural antibodies are treated more strictly than those who's immunity gained from vaccination is more limited.

Further, the NYS Health Department is using these punitive measures in effect to try to force an experimental vaccination on people, which is a further violation of the Nuremberg Code. The current vaccines in use are only allowed under an Emergency Use Declaration by the federal government. They are considered to still be in a clinical trial which is not scheduled to end until 2023. It is a violation of the Nuremberg Code to force or try to coerce people into undergoing an experimental medical treatment.

Further there is scientific evidence that those who already have Covid antibodies gain no further immunity from a vaccine, but may in fact put themselves at up to 4 times greater risk of having adverse side effects from the vaccine.

At the encouragement of state and local health departments and in some cases by additional regulations, the list of normal activities that these 2nd Class citizens are prohibited from engaging in is growing. Many stores are starting to display signs requiring the "Unvaccinated" to wear masks, and other businesses are not allowing the "Unvaccinated" to enter at all. This includes movie theatres, sporting and musical venues, and in some parts of the state gyms.

The Health Department's has adopted these coercive measures to try to bully a class of people who do not need the vaccine and are more likely to have more severe side effects to get the vaccine. This kind of coercion is illegal under the Nuremberg Code.

-
- B. What date and approximate time did the events giving rise to your claim(s) occur?
6/23/2021 and ongoing

-
- C. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*

I and millions of other Covid survivors in NY State have been prevented from entering medical offices, banks and other firms to conduct routine business without wearing a mask. We are not eligible to receive an "Excelsior Pass" which some businesses are requiring for entry even though our immunity is greater than vaccinated people. Because of medical issues that I have, I can not medically tolerate a mask. This impairs my right to conduct many routine activities that "First Class Citizens" enjoy. This creation of two classes of citizens is illegal, insidious, increasing and must be stopped!

IV. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

The injury is to my Constitutional right to be treated equally under the 14th Amendment.

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I would like the court to strike down these new regulations, and any similar regulations, as a violation of the 14th Amendment. I seek no monetary relief or punitive damages. In the alternative, I request that the court order the State Health Department to change the rules of the Excelsior Pass to allow people with proven antibodies to Covid to receive a pass.

VI. Certification and Closing

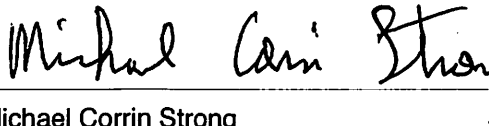
Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____ 08/10/2021

Signature of Plaintiff



Printed Name of Plaintiff

Michael Corrin Strong

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

CIVIL COVER SHEET

21-CV-0532 DGL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Michael Corrin Stronk

(b) County of Residence of First Listed Plaintiff Livingston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Howard D Zucker

County of Residence of First Listed Defendant Albany
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Act 1983
Brief description of cause: Violation of Equal Protection under 14th Amendment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ISSUED

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

Michael Corrin Strout

Plaintiff(s)

v.

HOWARD Zucker, MD

Defendant(s)

Civil Action No. 21-CV-6532 DGL

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

HOWARD Zucker, MD
Commissioner, NYS Dept of Health
Corning Tower, Empire State Plaza
Albany, NY 12237

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

AUG 10 2021

Date:


Signature of Clerk or Deputy Clerk